



June 16, 2023

SUBMITTED VIA ONLINE PORTAL

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960
(404) 562-9891

Re: Freedom of Information Act Request Regarding Five-Year Review for the Homestead Air Force Reserve Base

Dear Records Custodian:

This is a request for information on behalf of American Friends Service Committee (“AFSC”), pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the United States Environmental Protection Agency (“EPA”) FOIA regulations, 40 CFR Part 2, Subpart A. This request seeks records pertaining to the ongoing remediation process for the Superfund site at the Homestead Air Force Reserve Base located in Homestead, Florida.

I. Records Requested

We request the following records in the possession, custody, or control of the Air Force that were created, stored, or received related to the following Five-Year Review Report for the Superfund site at the Former Homestead Air Force Base, located in Homestead, Florida:

1. The Final Five-Year Review Report that was due to be released in 2021 (following the September 2016 Five-Year Review Report) for Base Realignment and Closure (BRAC) Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) Sites SS034/0U-20, SS035/0U-21, OT022/0U-26, OT024/0U-28, OT026/0U-29, SS040/0U-30, and SS042/0U-31 at the Former Homestead Air Force Base (AFB), Florida.

2. In the absence of a Final Five-Year Review Report for the above-listed sites that was due to be released in 2021, all draft copies of the Five-Year Review Report for Base Realignment and Closure (BRAC) Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) Sites SS034/0U-20, SS035/0U-21, OT022/0U-26, OT024/0U-28, OT026/0U-29, SS040/0U-30, and SS042/0U-31 at the Former Homestead Air Force Base (AFB), Florida.

II. Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under the FOIA, please exercise your discretion to disclose them, nevertheless. *See* Memorandum from the Attorney General to Heads of Executive Departments and Agencies (Mar. 19, 2009) (“[A]n agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.”), available at <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

Should you determine that any records may be withheld under FOIA’s narrow exemptions, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency’s justification for withholding it. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure. Finally, if a document does not exist, please indicate that in your written response.

III. Fee Waiver Requested

The requester, American Friends Service Committee, a public interest, nonprofit group is requesting a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), under which a fee waiver is warranted when disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government [and] disclosure of the information is not primarily in the commercial interest of the requester.” The purpose of this FOIA request satisfies these requirements, addressed in turn below, and a fee waiver is therefore warranted.

A. Requirement One: The Request is in The Public Interest Because It Is Likely to Contribute Significantly to Public Understanding of Operations and Activities of the Government.

To determine whether this first prong has been met, the EPA’s regulations establish four factors to be considered: 1) the subject of the request; 2) the informative value of the information to be disclosed; 3) the contribution to an understanding of the subject by the public that is likely to result from the disclosure; and 4) the significance of the contribution to public understanding. 40 C.F.R. § 2.107(l). AFSC satisfies each of these requirements, discussed in turn below:

1. *A Fee Waiver is Appropriate Because the Subject of the Requested Records Concerns the Operations or Activities of the Federal Government.*

EPA’s regulations establish that this factor is satisfied where “[t]he subject of the requested records [] concern[s] identifiable operations or activities of the federal government, with a connection that is direct and clear.” 40 C.F.R. § 2.107(l)(2)(i). Here, all of the records that AFSC has requested concern the ongoing remediation status of specific areas (Operable Units – “OUs”) within the Former Homestead Air Force Base, an assigned Superfund site under the

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (hereinafter referred to as the “Homestead Superfund site”). These comprehensive reports document detailed cleanup progress, environmental monitoring results, and the status of the OUs in relation to human health and the environment, and they are required to be prepared by the Federal Government under CERCLA.

While the Air Force is the lead agency responsible for cleanup of the site and preparation of Five-Year Review Reports, EPA provides oversight and review of this process, and signs off on the Five-Year Review Reports.¹ Because the records sought must be reviewed and approved by EPA by law, these records concern the operations or activities of the Federal Government, specifically, EPA, and the connection between the subject of the requested records and the identifiable operations and activities of the federal government is direct and clear.

2. A Fee Waiver is Appropriate Because the Disclosure of Information is Likely to Contribute to an Understanding of Government Operations or Activities.

Where the disclosure of information is “meaningfully informative about government operations or activities,” it is “likely to contribute to an increased public understanding of those operations or activities” and a fee waiver is appropriate. 40 C.F.R. § 2.107(l)(2)(ii).

Here, the records that AFSC seeks directly pertain to remedial activity at the Homestead Air Force Base Superfund site, which is also in vicinity of the site of the Homestead Detention Center for Unaccompanied Migrant Children (Homestead detention camp). There are at least 16 Superfund OUs at the Homestead Base that are within two-thirds of a mile of the Homestead detention camp.² Environmental pollution and contaminants can travel via various media, including the air, water, and soil. Thus, information contained within the records sought would greatly contribute to an understanding of the status of environmental conditions at and near the Homestead detention camp, that could in turn impact the children detained there.

Because the Five-Year Review reports are the only way for the public to learn of cleanup progress and remediation status of the Homestead Superfund site, and because the Federal Government is responsible for cleanup, report preparation, and oversight of this cleanup process, the records sought in this FOIA request would directly contribute to an increased understanding of government operations or activities.

¹ EPA, Superfund Site: Homestead Air Force Base, What Has Been Done to Clean Up the Site?, <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.cleanup&id=0404746#Done> (last visited June 16, 2023); see also Final Five-Year Review Report (Dec. 2004), which includes a letter from the EPA confirming EPA had reviewed the report based on its legal obligations to do so, thus confirming EPA would be in possession of these reports, available at <https://semspub.epa.gov/work/04/10141409.pdf>.

² U.S. Department of Health and Human Services, *Public Health Assessment for Homestead Air Force Base, Homestead AFB, Dade County, Florida, Cerclis No. FL7570024037* (September 30, 1998); AGEISS, Inc., HSWA Corrective Action Permit Renewal Application, Homestead Air Reserve Base, Florida EPA (February 2016).

3. *A Fee Waiver is Appropriate Because Disclosure Will Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject.*

EPA's regulations establish that when disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester," a fee waiver is appropriate. 40 C.F.R. § 6.107(l)(2)(iii). In addressing this factor, EPA will also "consider a requester's expertise in the subject area and ability and intention to effectively convey information to the public." *Id.* Here, AFSC has a broad audience of persons interested in the subject of remediation activity at a Superfund site in the vicinity of where federal immigrant detention has taken place in past years. AFSC also has the requisite expertise necessary to convey the information to the public.

Though currently closed, there has been longstanding public interest in the Homestead detention camp, and the latest news reports are that the camp has remained in "warm" status, meaning it could reopen at any time for children to be detained there.³ Additionally, current news articles discuss record numbers of migration to the U.S. border,⁴ meaning advocates have been vigilant to see if the Homestead detention camp could reopen.

When it was last operational, the Homestead detention camp was the largest child-immigrant detention center in the United States and the only child-immigrant detention center that operated for-profit (whereby the federal government contracted with a for-profit corporation to operate the facility).⁵ It was the subject of widespread protests and media coverage,⁶ garnering visits from members of Congress and presidential candidates.⁷ This media coverage has been sustained and renewed as Homestead has remained a possible location for the federal

³ Monique O. Madan, *There are no kids left at the Homestead detention center, but has it truly shut down?*, Miami Herald (August 6, 2019), available at <https://www.miamiherald.com/news/local/immigration/article233546697.html>.

⁴ Natalie Kitroeff, *What's Driving Record Levels of Migration to the U.S. Border?*, N.Y. Times, (May 11, 2023), available at <https://www.nytimes.com/2023/05/11/world/americas/title-42-migration-us-border.html>.

⁵ Dan Primack, *America's only for-profit detention center for migrant children*, Axios (June 27, 2019), available at <https://www.axios.com/homestead-private-equity-migrant-children-camps-55512adf-a64c-480e-b516-b6d836f0e2ea.html>.

⁶ Monique O. Madan, *Hundreds Protest outside Homestead detention center on Mother's Day*, Miami Herald (May 13, 2019), available at <https://www.miamiherald.com/news/local/immigration/article230274999.html>; Associated Press, *Advocates protest outside Homestead detention center for kids*, Sun-Sentinel (June 16, 2019), available at <https://www.sun-sentinel.com/2019/06/16/advocates-protest-outside-homestead-detention-center-for-kids/>.

⁷ CBS News, *Warren and Klobuchar visit Homestead detention center*, June 26, 2019, <https://www.cbsnews.com/video/elizabeth-warren-amy-klobuchar-visit-homestead-detention-center/>; Daniel A. Varela, *Democratic presidential candidate Bernie Sanders visits Homestead Detention Center*, Miami Herald (June 26, 2019), available at <https://www.miamiherald.com/news/politics-government/article232041877.html>; John Haltwanger, *Beto O'Rourke and Bernie Sanders visited a migrant child detention facility, prompting emotional, powerful scenes*, Business Insider (June 27, 2019), available at <https://www.businessinsider.com/beto-orourke-bernie-sanders-visit-migrant-child-detention-center-2019-6>; David Smiley et al., *Nelson, Wasserman Schultz blocked from entering immigrant children shelter in Homestead*, Miami Herald (June 19, 2018), available at <https://www.miamiherald.com/news/local/community/miami-dade/homestead/article213449739.html>.

government to detain migrant children.⁸ Interest in the conditions near the Homestead detention camp remain a subject of broad interest by a wide cross-section of advocates, immigrant rights groups, environmental organizations, and politicians.

In considering this factor, EPA will also “consider a requester’s expertise in the subject area and ability and intention to effectively convey information to the public.” 40 C.F.R. § 6.107(l)(2)(iii). AFSC has the requisite expertise and experience to effectively convey the information learned from this FOIA request, and it has every intention of doing so.

AFSC is a longstanding, national nonprofit organization with significant and deep experience in immigrants’ rights advocacy, in the areas of legal advocacy, policy, visitation, grassroots organizing, and public health. In addition to its own work, AFSC participates in broad coalitions where it has coordinated with Congressional representatives to advocate for migrant justice, coordinated advocacy with detained individuals and their loved ones, and publicized abhorrent conditions at the detention facilities through local and national media and through press conferences.

AFSC is made of up experts in their own right, and the organization has partnered in its Homestead detention center work with a researcher who holds a PhD in American Studies from New York University, who is a Postdoctoral Fellow in the Department of Anthropology at Columbia University and is an incoming Assistant Professor at Loyola Marymount University. The organization has also partnered with lawyers and policy and communications strategists at the national environmental nonprofit Earthjustice, as well as with scientific experts, in this work.

The organization has a track record of disseminating public information about environmental conditions at and near the Homestead detention camp, utilizing information from past Five-Year Review Reports about the Homestead Superfund site.⁹ AFSC is an avid advocate on issues of social justice such as migrant detention, with followers in the tens of thousands across social media.

The work of AFSC focuses on immigrants’ rights and migrant detention and has included the chronicling of information regarding detention facilities that have reached broad audiences via news media, congressional partnerships, academic research, legal advocacy, and the preparation and publication of reports and research articles. Similarly, here, AFSC intends to document information learned from the latest Five-Year Review Report for the OUs at issue in reports, presentations, media interviews, academic events, conferences, coalition meetings, etc. – where the information will expertly reach a broad audience of interested persons.

⁸ See, e.g., Ray Levy Uyeda, *The Biden administration may detain immigrant youth at a toxic site*, Prism (Aug. 22, 2022), available at <https://prismreports.org/2022/08/22/detain-immigrant-youth/>.

⁹ AFSC, *Health at Risk: Potential Toxic and Noise Exposure Endangering Children at the Homestead Temporary Shelter for Unaccompanied Migrant Children*, Aug. 2019, https://afsc.org/sites/default/files/documents/AFSC%27s%20Report%20on%20Health%20at%20Risk%20at%20Homestead%20Detention%20Center_2.pdf; AFSC and Earthjustice, *The Toxic Truth: Organizing Against Migrant Child Detention, Militarism, and Environmental Racism in Homestead, Florida*, Oct. 2021, <https://afsc.org/sites/default/files/documents/AFSC%20Toxic%20Truth%202021.pdf>.

Because disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and because AFSC has the requisite expertise in the subject area and the ability and intention to effectively convey information broadly to the public, a fee waiver is appropriate.

4. *A Fee Waiver is Appropriate Because Disclosure Will Contribute Significantly to Public Understanding of Government Operations or Activities.*

EPA's regulations also require that the disclosure's contribution to public understanding be "significant." 40 C.F.R. § 2.107(l)(2)(iv).¹⁰ To satisfy this factor, "[t]he public's understanding of the subject in question must be enhanced . . . to a significant extent." *Id.*

As noted above, there is a significant public interest in the subject of the requested records. However, there is no way to know about the status and details of the cleanup at the Homestead Superfund site – on a military base – absent the records sought in this FOIA request, which are prepared and maintained solely by the Federal Government. While the Five-Year Review Report sought in this request is intended to be public record, it is not currently available in any public facing document repository. Thus, disclosure of the records sought via this FOIA request process will contribute significantly to an understanding of the current environmental status of the Superfund OUs and conditions at the Superfund site.

B. Requirement Two: The Request is Not Primarily in the Commercial Interest of the Requester.

To determine whether this second prong has been met, EPA's regulations establish two factors to be considered: 1) the existence and magnitude of a commercial interest disclosure; and 2) if there is a commercial interest in disclosure, whether the commercial interest or the public interest is the primary interest. 40 C.F.R. § 2.107(l)(3).

AFSC, as well as the undersigned law organization submitting the request on their behalf, are both § 501(c)(3) tax-exempt nonprofit organizations with no commercial interest in obtaining the requested information. AFSC is dedicated to studying factors and phenomena related to those in immigration custody and advocating for immigrants' rights and for the health, safety, and welfare of the immigrant community. Their interests in disclosure are for the conveyance of information to the interested public and the furtherance of their organizational mission. Because AFSC has no commercial interest in the requested disclosure, the public will be the primary beneficiary of the requested information and therefore a fee waiver is appropriate. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

¹⁰ However, the agency shall not "make value judgements about whether the information at issue is 'important' enough to be made public." *Id.*

Because there is no commercial interest in AFSC's request, it is not necessary to analyze the second factor of how the public interest weighs against the commercial interest.

For all of the foregoing reasons, AFSC bringing this FOIA request has demonstrated that it satisfies each of the factors to be considered in granting a fee waiver, and a fee waiver is therefore appropriate in this instance.

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Please send the requested records by email to dburkhardt@earthjustice.org or, for records not available electronically, by regular mail to Dominique Burkhardt, Earthjustice, 4500 Biscayne Boulevard, Suite 201, Miami, FL 33137. If you find this request is unclear in any way, please do not hesitate to contact me by phone at 305-440-5435.

Thank you for your time and assistance. We look forward to your prompt reply.

Sincerely,

s/ Dominique Burkhardt

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